TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 509.

THE UNITED STATES, APPELLANT,

vs.

STEPHEN C. MILLS.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 21, 1905.

(19609.)

SUPREME COURT OF THE UNITED STATES.

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No. 509.

THE UNITED STATES, APPELLANT,

vs.

STEPHEN C. MILLS.

APPEAL FROM THE COURT OF CLAIMS.

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1 STEPHEN C. MILLS
vs.
UNITED STATES. } No. 23303.

PETITION. 1.

(Filed June 16, 1903.)

To the Honorable the Court of Claims:

The claimant, Stephen C. Mills, respectfully represents:

I.

That he entered the military service of the United States as a cadet at the Military Academy July 1, 1873, and was commissioned a second lieutenant on June 15, 1877. By successive promotions he reached the grade of major with an appointment as inspector-general on July 25, 1898. He was promoted to lieutenant-colonel and inspector-general February 2, 1901.

II.

On May 26, 1900, he was, under orders issued by competent authority, on duty with the Army of the United States in the Philippine Islands, where he served until ordered to return to the United States. He left the Philippine Islands under orders for the United States and arrived in San Francisco, California, April 15, 1902.

III.

On May 26, 1900, to February 1, 1901, while in the grade of major, claimant was paid, in accordance with sections 1261, 1262 of the Revised Statutes, at the rate of $3,500 a year. Under the act of May 26, 1900 (31 Stat. L., 211), claimant received an additional ten per centum calculated upon $2,500, making his total pay for said period at the rate of $3,750 a year. From February 2, 1901, to April 15, 1902, claimant was paid in accordance with said laws at the rate of $4,000 a year. He also received under the act of May 26, 1900, an additional ten per centum calculated upon $3,000, making his total rate of pay for said period $4,300 a year.

IV.

Under the act of May 26, 1900, claimant is entitled to be paid as follows:

May 26, 1900, to February 2, 1901—	
Pay of the grade of major as established by section 1261 R. S..	$2,500
Longevity increase as established by section 1262 R. S., of ten per cent for five years' service.....	1,000
Ten per cent increase over and above the rates of pay proper, as fixed by the act of May 26, 1900 (31 Stat. L., 211).....	350
Total.....	3,850

2 February 2, 1901, to April 15, 1902—

Pay of the grade of lieutenant-colonel as provided by section 1261 R. S.	$3,000
Longevity increase as provided by section 1262 R. S., of ten per cent for each five years' of service, subject to section 1267 R. S., limiting the pay of a lieutenant-colonel to $4,000	1,000
Ten per cent increase on pay proper, as provided by the acts of May 26, 1900 (31 Stat. L., 211), and March 2, 1901 (31 Stat. L., 903)	400
Total	4,400

A difference therefore arises in favor of claimant for the period from May 26, 1900, to the date of his return to the United States, April 15, 1902, amounting to $188.87, which he claims.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of one hundred and eighty-eight dollars and eighty-seven cents ($188.87).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

Stephen C. Mills, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

STEPHEN C. MILLS.

Subscribed and sworn to before me this 15th day of June, 1903.

[SEAL.] JOHN J. COOK,
Notary Public.

3 GENERAL TRAVERSE. II.

(Filed December 13, 1904.)

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW. III.

(Filed December 19, 1904.)

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT:

I. Appointment and service.

The claimant, Stephen C. Mills, entered the military service of the United States as a cadet at the Military Academy July 1, 1873, was commissioned second lieutenant June 15, 1877, and by successive promotions became major and inspector-general July 25, 1898, and lieutenant-colonel and inspector-general February 2, 1901, and still holds the last-named rank and office.

II. Service beyond the limits of the States, etc.

The claimant was by proper military orders on duty with the Army of the United States in the Philippine Islands from a date prior to May 26, 1900, continuously until April 15, 1902, when, in accordance with orders, he arrived at San Francisco, California, on his return from said Philippine Islands. During all of that period he was serving in the Philippine Islands and beyond the limits of the States comprising the Union and the Territories of the United States contiguous thereto.

III. Rate of pay.

During the entire period from May 26, 1900, to April 15, 1902, named in the next preceding finding, the claimant while holding the rank of major was paid at the rate of $2,500 a year, the minimum pay of the grade of major established by section 1261 of the Revised Statutes; $1,000 longevity increase established by section 1262 of the Revised Statutes, and $250 a year as the increase of ten per cent upon his pay proper provided by the act of May 26, 1900 (31 Stat. L., 211), but calculated only upon the minimum or grade pay fixed by said section 1261.

While holding the rank of lieutenant-colonel during said period the claimant was paid at the rate of $3,000 a year, the minimum pay of that grade as provided by section 1261 of the Revised Statutes, $1,000 longevity increase provided by section 1262, and $300 a year as ten per cent increase on his pay proper as provided by the acts of May 26, 1900, and March 2, 1901 (31 Stat. L., 211, 903), but computed only on the minimum pay of the grade.

5 *IV. Corrected calculation.*

If said ten per cent increase should be calculated upon the total pay of $3,500 received by the claimant while in the rank of major, his increase would be at the rate of $350 a year instead of $250, and if so calculated while he was in the rank of lieutenant-colonel the increase

would be at the rate of $400 a year instead of $300, making a difference of $100 a year for the period covered by the claim, and aggregating for the entire period $188.87.

CONCLUSIONS OF LAW.

Upon the foregoing facts, the court decides as a conclusion of law that the claimant is entitled to the sum of $188.87, being the calculation of ten per cent increase of pay as aforesaid at the rate of $400 a year instead of $300, a difference of $100 a year, for a period covered by the claim. The reasons for said conclusion have heretofore been set forth by the court in the opinion in the case of Irwin v. The United States (38 C. Cls. R., 87, 101–103) as follows:

"The next question for determination on this branch of the case relates to the 10 per cent increase allowed for service over and above the rates fixed by law in times of peace, and the proper method of calculating the increase.

"The act of May 26, 1900 (31 Stats., 211), is an army act. It provides 'That hereafter the pay proper of all officers and enlisted men serving in Porto Rico, Cuba, the Philippine Islands, Hawaii, and the Territory of Alaska shall be increased 10 per centum for officers and 20 per centum for enlisted men over and above the rates of pay proper as fixed by law in time of peace.' Under the operation of the acts of March 3, 1899, and March 3, 1901, plaintiff claims that as his service on shore at the Cavite Naval Station was shore duty beyond seas he is entitled to the full sea pay of his rank while on such duty, as provided by law for officers of the Army of corresponding rank similarly detailed, and that the increase of the pay proper of officers and enlisted men made in the Army appropriation act of May 26, 1900, grants to him, under the operation of the act of March 3, 1899, an increase of 10 per cent of his pay proper, such pay proper being the sum of $3,500 a year as the pay of an officer of his rank of more than twenty years' service. But the question is whether the increase shall be calculated upon the minimum pay of the grade or upon the total pay, including longevity increase. In other words, shall the increase be computed upon $2,500, constituting the lowest pay of a lieutenant-commander, or upon $3,500, constituting the total pay which carries the amount of the longevity increase?

6 "The proper determination of the question depends upon the true meaning of the words 'pay proper' as they appear in the statute.

"It is insisted by the defendants that in using the words 'pay proper' the minimum pay of the grade is the true basis of calculation. That is the construction of the accounting officers. (4 Comp. Dec., 668, and 6 Comp. Dec., 944.)

"The want of any statutory definition or direct judicial determination involves the matter in doubt as to whether 'pay' and 'pay proper' are equivalent, and whether the word 'proper' refers to any special kind of pay or only means that compensation which is properly called 'pay.'

"Military lexicons disclose differences between pay and allowances to officers. These differences nowhere appear more clearly stated than in Sherburne's case (16 Cls. R., 491), in which, quoting from Scott's Military Dictionary, it is shown that 'Pay is a fixed and direct amount given by law to persons in the military service in consideration of and as compen-

sation for their personal service. Allowances, as they are now called, or emoluments, as they were formerly termed, are indirect or contingent remuneration which may or may not be earned, and which is sometimes in the nature of compensation and sometimes in the nature of reimbursement.'

"In Tyler v. United States (16 C. Cls. R., 223) the method of computing longevity pay prescribed by section 1262 of the Revised Statutes was declared to be not by taking one-tenth of the officer's fixed annual pay, but one-tenth of his current yearly pay; that is, his second longevity pay to include 10 per cent of his first longevity pay, subject to another provision limiting the total amount of such increase to 40 per cent of the fixed annual pay. In affirming this judgment, Mr. Justice Miller, for the Supreme Court, said that 'the words "current yearly pay" require that when the increased pay for any period of five years is to commence the 10 per cent must be counted on the regular salary added to its increase by any previous periods of five years; so that the original salary of the rank and any additions of 10 per cent previously earned for periods of five years constitute the current yearly pay on which said 10 per cent is to be calculated.' (105 U. S. R., 244, 246.)

"In Emory v. United States (19 C. Cls. R., 255) it was held that the 'three months' extra pay' given to those who served in the war with Mexico, by the acts of 1848 and 1879, is pay proper, not pay and allowances. This opinion treats 'pay' and 'pay proper' as interchangeable terms.

"An officer's annual pay implies a pay subject to change. When the longevity increase attaches it is as much of the officer's proper pay as the amount first fixed.

"Pay proper is pay regulated by service. It depends upon the officer's longevity. Longevity arises out of length of service and is founded on that. The pay proper in such a case is determinable upon an officer's lustrum—the amount he is to receive for every five years' period of service.

"Longevity pay provisions are a legislative convenience. They go hand in hand with the officer's pay as the years add to his term of service. These provisions say in effect that a major shall receive, during the first five years of service, $2,500; during the second, $2,750, etc. Thus longevity pay is as fixed and certain as if actual amounts had been named.

"From these views we think that the computation made upon the minimum pay of the grade is erroneous.

7 JUDGMENT. IV.

(Filed December 19, 1904.)

At a Court of Claims held in the city of Washington, on the nineteenth day of December, A. D. 1904, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Stephen C. Mills, have and recover of and from the United States the sum of one hundred and eighty-eight dollars and eighty-seven cents ($188.87).

8 APPLICATION FOR AND ALLOWANCE OF APPEAL. V.

(Filed January 4, 1905.)

From the judgment rendered in the above-entitled case on the nineteenth day of December, 1904, in favor of the claimant the defendants, by their Attorney-General, on the 4th day of January, 1905, make application for and give notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Allowed, January 4, 1905.
CHARLES C. NOTT,
Chief Justice.

9 In the Court of Claims.

STEPHEN C. MILLS
vs.
THE UNITED STATES. } No. 23303.

I, Archibald Hopkins, clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, and judgment with the application for and allowance of the appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 18th day of January, 1905.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk, Court of Claims.

10 (Indorsement on cover:) File No. 19609. Court of Claims. Term No., 509. The United States, appellant, vs. Stephen C. Mills. Filed January 21st, 1905. File No. 19609.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
STEPHEN G. MILLS.
No. 503.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

LOUIS A. FRANK,
Assistant Attorney-General.

JOHN G. THOMPSON,
Special Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
STEPHEN C. MILLS. } No. 509.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

By reason of certain services in the Philippine Islands set forth in the record, pages 1 and 2, appellee, Stephen C. Mills, was entitled to 10 per cent increase on his "pay proper." He was paid the 10 per cent based on the minimum pay of his rank, exclusive of all longevity increase. He contends that the 10 per cent increase should be computed upon the full maximum pay to which he is entitled, including longevity pay. In other words, it is the contention of claimant that the term "pay proper" means the entire pay, including the longevity increase, and that the 10 per cent allowed him for services beyond the continental limits of the United States and the Territories contiguous thereto should be paid on this maximum pay.

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The Government's contention is that the per cent of increase was properly computed upon the normal or minimum pay of the grade and not upon the current yearly pay, which includes the increase of pay for length of service. The statutes granting the increase of pay being the acts of May 26, 1900, and March 2, 1901. (31 Stat. L., pp. 211 and 903, respectively.)

The difference in the basis of calculation amounts to the sum of $188.87, for which sum the Court of Claims gave judgment. (Record, p. 5.)

ASSIGNMENT OF ERROR.

The appellant assigns the following error in the judgment of the Court of Claims:

The court erred in rendering judgment in favor of claimant in any amount whatever.

ARGUMENT.

The question presented turns upon the meaning of the words "pay proper," as used in the statute of May 26, 1900, making appropriations for the support of the Regular and Volunter Army for the fiscal year ending June 30, 1901, and as used in the statute passed March 2, 1901. The statutes are as follows:

In the act of May 26, 1900, making appropriation for the support of the Regular and Volunteer Army for the fiscal year ending June 30, 1901, Congress provided in part as follows:

> For additional twenty per centum increase on pay of enlisted men, four million five hundred and twenty-four thousand seven hundred and fifteen dollars: *Provided*, That hereafter

> the pay proper of all officers and enlisted men serving in Porto Rico, Cuba, the Philippine Islands, Hawaii, and in the Territory of Alaska, shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law in time of peace. (See 31 Stat. L., p. 211.)

In the act passed March 2, 1901, entitled, "An act making appropriation for the support of the Army for the fiscal year ending June 30, 1903," Congress provided in part as follows:

> *Provided*, That hereafter the pay proper of all officers and enlisted men serving beyond the limits of the States comprising the Union, and the Territories of the United States contiguous thereto, shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto:
>
> *Provided further*, That the officers and enlisted men who have served in China at any time since the twenty-sixth day of May, nineteen hundred, shall be allowed and paid for such service the same increase of pay proper as is herein provided for. (See 31 Stat. L., p. 903.)

The Comptroller of the Treasury, in passing upon a similar statute, said:

> The question presented turns upon the meaning of the words "pay proper of enlisted men,"

as used in said section 6 of the act approved April 26, 1898. Was it intended by said section 6 to limit the 20 per cent increase to rates of pay prescribed in said section 1280, being the minimum or lowest pay of each grade, or was it intended that the 20 per cent increase should also be computed upon the additions to a soldier's pay to which he may be entitled for length of service, reenlisting, or a certificate of merit? The term "pay proper" seems to have been employed in the earlier decisions and opinions as a means of distinguishing with greater accuracy between "pay" and "allowances." On August 15, 1852, Second Comptroller Phelps, in passing upon a claim for emoluments or allowances under a private act granting 35 years' half pay, used the following language:

"The term 'half pay' is one that is very commonly used in our statutes, and has long ago acquired in commerce, as well as at the Departments and in the courts, a distinct and well-understood legal significance. It has always been construed to mean half the *pay proper* of the officer, exclusive of his emoluments and allowances, which are entirely distinct from the pay, are greater in amount, authorized by different enactments, and payable out of other appropriations.

"A familiar instance of this construction will be found in the numerous military and naval half-pay pensions which have always been understood as authorizing half pay proper."

In computing the three months' extra pay given by the act of July 19, 1848 (9 Stat.,

248), for service in the war with Mexico, it was the rule to include only what the soldier was entitled to receive by way of stated compensation, as distinguished from allowances or emoluments; and, in order to more clearly define the distinction, the words "pay proper" were used in the decisions construing said act. The words "pay proper" were apparently first used in legislation in section 4 of the act of March 3, 1865 (13 Stat., 497), which granted an addition of three months' *pay proper* to certain officers of the Volunteer Army who should serve to the end of the war, to be paid on their discharge. The words were also used in section 1, act of March 2, 1867 (14 Stat., 422), granting an increase of 33⅓ per cent of the *pay proper* of certain officers of the army for two years after July 1, 1866. In computing the three months' pay proper under the act of March 3, 1865, where an officer was discharged after July 1, 1866, and was therefore entitled to the one-third increase provided for in said act of March 2, 1867, such increase was included, thus treating it as a part of "pay proper." (Dec. Second Comptroller, vol. 45, p. 129.) These cases are the only ones I have been able to find where the words "pay proper" have been construed as including or excluding increased pay. Officers of the Army, before the act of 1867, received no increase over their regular rate of pay, except by way of rations for longevity under the act of July 5, 1838 (5 Stat., 258), which was never treated as pay. Since the legislation and decisions above referred to the

words "pay proper of enlisted men" have been employed in different appropriation acts with such uniformity as to give them a definite and technical meaning. In the act of June 30, 1886 (24 Stat., 93), making appropriations for the support of the Army, separate and distinct appropriations were made for the "pay proper of enlisted men of all grades" and for "pay to enlisted men by reason of length of service in addition to their regular pay." Appropriations have been made in substantially the same language for each succeeding year from 1886 to the present time.

In the act of Congress entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1899," approved March 15, 1898, is the following provision:

"For pay proper of enlisted men of all grades, four million two hundred and ninety thousand dollars.

"Additional pay for length of service, including hospital corps, six hundred seventy-one thousand one hundred and seventy-two dollars."

Statutes upon the same or similar subjects should be taken into consideration in construing the law, and the same meaning given to the same words used in both, unless a contrary meaning is clearly intended. By the above act, and in each act making the annual appropriations for the support of the Army from and including 1886 to the present time, Congress has so distinguished "pay proper of enlisted men" from "additional pay for length of serv-

ice" as to amount to a legislative declaration that in the use of the words "pay proper of enlisted men" it does not mean "additional pay for length of service." (4th Comp. Dec., 669–672.)

THE TYLER CASE.

"CURRENT YEARLY PAY."

The claimant relies upon the case of *Tyler* v. *The United States* (105 U. S., p. 244). The statute under consideration in the Tyler case is as follows (section 1262):

> There shall be allowed and paid to each officer below the rank of brigadier-general, including chaplains, and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years' service.

Claimant's counsel insist that this statute involves substantially the same question as the law under consideration. There is, however, practically no similarity between the case at bar and the Tyler case. In the Tyler case the court was construing the meaning of the words "current yearly pay" for the purpose of fixing the basis for 10 per cent longevity pay, and the court said:

> We also hold that the words "current yearly pay" in section 1262 require that, when the increased pay for any period of five years is to commence, the 10 per cent must be counted on the regular salary added to its increase by any previous periods of five years; so that the original salary of the rank, and any additions

> of 10 per cent previously earned for periods of five years, constitute the current yearly pay on which said 10 per cent is to be calculated.

It will be seen that the court applies the term "regular salary" to the salary as fixed by section 1261, which said regular pay plus the increased pay, in the opinion of the court, constituted the officer's "current yearly pay."

There the court was simply construing the term "current yearly pay," as found in section 1262. It may be pertinently added that immediately after this decision Congress provided—

> that from and after the first day of July, eighteen hundred and eighty-two, the ten per cent increase for length of service allowed to certain officers by section twelve hundred and sixty-two of the Revised Statutes, shall be computed on the *yearly pay of the grade* fixed by sections twelve hundred and sixty-one and twelve hundred and seventy-four, Revised Statutes. (See 22 Stat. L., p. 118.)

But in the case at bar the court is not required to construe the phrase "current yearly pay." The words do not occur in the statute under consideration. The court is required to give its interpretation of the words "pay proper," as used in the act of May 26, 1900, and the act of March 2, 1901.

The word "current," as used in the phrase "current yearly pay," has a definite and fixed signification. "Current yearly pay," as used in the Tyler case, means the current or running pay of the officer, in-

cluding all extras, percentages, and everything that is included in the sum total of the officer's pay. The term "pay proper," however, would seem to be the pay of the grade aside from all extras and allowances. When speaking of the "pay of the grade," we mean the pay of the grade as fixed by section 1261 of the Revised Statutes. What better or more distinctive term could Congress have used in the various acts granting extras and allowances than the term "pay proper?" The pay fixed by section 1261 is properly speaking, the pay of the officers therein mentioned and therefore is the "pay proper"—all additions to this pay being extra pay, by reason of longevity, or of some particular place or time of service and allowance. Taken, therefore, in the light of all legislation upon the subject of pay and giving the words their normal meaning, the phrase "pay proper" is the appropriate and natural language to designate the pay described in section 1261, as distinguishing it from the full compensation, with all extras, longevity pay, and allowances, added thereto.

For the foregoing reasons it is insisted that the judgment of the Court of Claims was erroneous and should be reversed.

LOUIS A. PRADT,
Assistant Attorney-General.

JOHN Q. THOMPSON,
Special Attorney.

O

IN THE

Supreme Court of the United States.

October Term, 1904.

THE UNITED STATES, Appellant,
v.
STEPHEN C. MILLS. } No. 509.

BRIEF FOR APPELLEE.

I. Statement of the Case.

The claimant, Stephen C. Mills, was during the time covered by this claim Inspector-General in the army and on duty in the Philippine Islands from May 26, 1900, to April 15, 1902. From May 26, 1900, to February 2, 1901, he was of the rank of major and after that date of the rank of lieutenant-colonel.

His pay in these respective grades was as prescribed by the following provisions of the Revised Statutes:

"Section 1261. The officers of the Army shall be entitled to the pay herein stated after their respective designations; * * *

"Lieutenant-colonel: $3,000 a year; Major: $2,500 a year. * * *

"Section 1262. There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

[Amended by Act of June 30, 1882 (22 Stat. L. 118), to provide that the increase "shall be computed on the yearly pay of the grade."]

"Section 1263. The total amount of such increase for length of service shall in no case exceed forty per centum on the yearly pay of the grade as provided by law.

"Section 1267. In no case shall the pay of a colonel exceed $4,500 a year, or the pay of a lieutenant-colonel exceed $4,000 a year."

The claimant received pay under these statutes as follows:

As Major:	
Grade pay under R. S. § 1261	$2,500 00
Longevity pay under R. S. §§ 1262, 1263 . .	1,000 00
Total pay	$3,500 00
As Lieutenant-Colonel:	
Grade pay under R. S. § 1261	$3,000 00
Longevity pay under R. S. §§ 1262, 1267 . .	1,000 00
Total pay	$4,000 00

While he was serving in the Philippine Islands Congress passed the two following acts:

"That hereafter the pay proper of all officers and enlisted men serving in Porto Rico, Cuba, the Philippine Islands, Hawaii, and in the Territory of Alaska shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law in time of peace." May 26, 1900, 31 Stat. L. 211.

"That hereafter the pay proper of all officers and enlisted men serving beyond the limits of the States comprising the Union and the Territories of the United States contiguous thereto, shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto." March 2, 1901, 31 Stat. L. 903.

In paying the increase of "pay proper" provided by these acts, the amount was calculated only upon the minimum or grade pay fixed by § 1261. His claim is that the increase provided by these acts should be based upon the entire pay received, including the longevity increases.

The annual rate of pay received and claimed while on this duty may be tabulated as follows:

As MAJOR:

Received—

Grade pay, under R. S. § 1261	$2,500 00
Longevity pay under R. S. §§ 1262, 1263 . .	1,000 00
Foreign service increase under acts of 1900 and 1901, ten per cent on grade pay alone . . .	250 00
Total received while on foreign service .	$3,750 00

Claimed—

Foreign service increase under acts of 1900 and 1901, ten per cent on longevity pay also . .	100 00
Total claimed to be due	$3,850 00

As LIEUTENANT-COLONEL:

Received—

Grade pay under R. S. § 1261	$3,000 00
Longevity pay under R. S. §§ 1262, 1267 . .	1,000 00
Foreign service increase under acts of 1900 and 1901, ten per cent on grade pay alone . . .	300 00
Total received while on foreign service .	$4,300 00

Claimed—

Foreign service increase under acts of 1900 and 1901, ten per cent on longevity pay also . .	100 00
Total claimed to be due	$4,400 00

The Court of Claims sustained this view and rendered judgment for the amount claimed, aggregating $188.87. This judgment was based upon its prior opinion in the case of *Irwin* v. *United States* (38 C. Cls. 87). The material part of that opinion is embodied in the record of this case (pp. 4, 5).

The appeal of the United States questions the correctness of this conclusion.

II. Brief of Argument.

This case turns upon the meaning of the words "pay proper" as used in the acts of May 26, 1900, and March 2, 1901, granting an increase of "pay proper" to officers serving in the Philippine Islands and elsewhere beyond the limits of the United States.

The Government contends that "pay proper" means one kind of pay, the pay of the grade fixed by R. S. § 1261. The claimant contends that "pay proper" means pay, as distinguished from allowances; that it includes both grade pay and longevity pay and that the term is equivalent to "what is properly pay," or "pay itself," or "pay alone." The term is technical. Its meaning can be found by reference to legislative, judicial, and executive authority as well as to the received meaning of the adjective "proper" when following its noun.

This question was elaborately considered by the Court of Claims in the case of *Irwin* v. *United States* (38 C. Cls. 87). As the material portion of its opinion in that case is reproduced in the record (pp. 4, 5), giving the ground of its decision in this case, it is not necessary to quote it here. A few suggestions may be added to reinforce the conclusion reached by the Court of Claims.

Dictionary Definitions.

The use of the term "pay proper" as meaning "whatever is in a proper sense pay" is in strict accord with the definitions of the word "proper" found in the dictionaries, as follows:

Webster's Dictionary:

"*Proper:* 6. Rightly so called; strictly considered; as Greece proper; the garden proper."

Century Dictionary:

"*Proper*—5. Rightly so called, named or described; taken in a strict sense, usually following the noun, as the apes proper belong to the Old World. No shell fish are fishes proper.

"'This elevation descended into what might be called the garden proper.' Scott, Waverly, IX.

"'It is safe to assert that no government proper ever had a provision in its organic law for its own termination.' Lincoln in Raymond, p. 614."

Standard Dictionary:

"*Proper*—4. Conceived according to the strict definition or application of the term; understood in the most approved or correct sense; commonly following the noun modified.

"'A mere physical affection of the organism does not constitute a sensation proper.' Spencer, Psychology, vol. ii, § 353, p. 246."

These definitions are exactly applicable here. The term "pay proper" means that part of an officer's compensation which is properly called pay as distinguished from allowances.

Judicial Precedents.

There is no direct definition of "pay proper" to be found either in statute or in judicial decision. We shall show hereafter how the term when used in a statute was practically construed.

The decision of this court in *United States* v. *Tyler*, 105 U. S. 246, involves a practical definition of the term in its application to this case.

Revised Statutes, § 1261, provides that officers of the army shall be entitled "to the pay hereinafter stated." Then follows a certain rate of pay for each grade.

Section 1262 provides that they shall have a longevity increase of "ten per centum of their current yearly pay for each term of five years."

Section 1263 provides that the total increase shall not exceed forty per centum on the "yearly pay of the grade" as provided by law.

In these two sections there are two designations for officers' pay, "current yearly pay" and "yearly pay of the grade." The minimum pay fixed by section 1261 is called "the yearly pay of the grade."

The question in the *Tyler* case was whether "current yearly pay" was equivalent to "yearly pay of the grade," or whether it meant the "yearly pay of the grade" plus the increase under section 1262. This court held that "current yearly pay" in section 1262 meant the entire yearly pay of an officer, including both grade and longevity pay. In concluding its opinion the court said (105 U. S. 246):

"We also hold that the words 'current yearly pay,' in § 1262, require that, when the inceased pay for any period of five years is to commence, the ten per cent must be counted on the regular salary added to its increase by any previous periods of five years; so that the original salary of the rank, and any additions of ten per cent previously earned for periods of five years, constitute the current yearly pay on which said ten per cent is to be calculated."

That decision is decisive of the present case, because it holds that longevity pay is a part of the officer's pay

and thus distinguishes it from allowances. If it is pay and not allowances, it is "pay proper."

In *Emory* v. *United States*, 19 C. Cls. 254 (affirmed 112 U. S. 510), the Court of Claims shows in a number of passages the use of the term "pay proper" as equivalent to "pay" distinguished from allowances. Thus (p. 266):

"A number of questions here arise as to what shall be deemed the 'extra pay provided for by the Act of July 19, 1848.' Does 'pay' mean simply that part of military compensation generally termed 'pay,' and sometimes 'pay proper,' or does it mean the entire compensation known as 'pay and allowances'?"

Again (p. 267):

"As to the question whether the term 'pay' when applied to army officers means pay and allowances or pay proper."

The court refers to the change in the system of pay and allowances in these terms (p. 268):

"At the present time these allowances to army officers for the most part have been abolished, and the pay proper correspondingly increased."

As an illustration of the certain and fixed meaning of the words "pay proper," we refer to the characterization in that opinion (p. 269) of these words, as "the unmistakable term 'pay proper.'"

The court says again as to the uses of the words "pay" and "pay proper" (p. 269):

"In the third place, the word 'pay,' in the act of 1848, for more than thirty-five years has been held to mean pay proper, and nothing more."

That carefully considered opinion conclusively shows the actual use of the words "pay" and "pay proper," as

equivalent. The word "proper" does not refer to any special kind of pay, but means that compensation which is properly called "pay."

Executive and Legislative Precedents.

The Court of Claims refers in the course of its opinion to a decision of the accounting officers (4 Comp. Dec. 668) adverse to this definition of pay proper. The departmental and legislative precedents cited in that decision are all in favor of the definition upheld by the Court of Claims. We quote therefrom as follows (4 Comp. Dec. 670, 671):

"The term 'pay proper' seems to have been employed in the earlier decisions and opinions as a means of distinguishing with greater accuracy between 'pay' and 'allowances.' On August 15, 1852, Second Comptroller Phelps, in passing upon a claim for emoluments or allowances under a private act granting thirty-five years' half-pay, used the following language:

"'The term "half-pay" is one that is very commonly used in our statutes, and has long ago acquired in commerce, as well as at the Departments and in the courts, a distinct and well-understood legal significance. It has always been construed to mean half the *pay proper* of the officer, exclusive of his emoluments and allowances, which are entirely distinct from the pay, are greater in amount, authorized by different enactments, and payable out of other appropriations.

"'A familiar instance of this construction will be found in the numerous military and naval half-pay pensions which have always been understood as authorizing half-pay proper.'

"In computing the three months' extra pay given by the act of July 19, 1848 (9 Stat. 248), for service in the war with Mexico, it was the rule to include only what the soldier was entitled to receive by way of stated compensation, as distinguished from allowances or emoluments; and, in order to more clearly define the distinction, the

words 'pay proper' were used in the decisions construing said act.

"The words 'pay proper' were apparently first used in legislation in section 4 of the act of March 3, 1865 (13 Stat. 497), which granted an addition of three months *pay proper* to certain officers of the volunteer army who should serve to the end of the war, to be paid on their discharge. The words were also used in section 1, act of March 2, 1867 (14 Stat. 422), granting an increase of 33⅓ per cent of the *pay proper* of certain officers of the army for two years after July 1, 1866. In computing the three months' pay proper under the act of March 3, 1865, where an officer was discharged after July 1, 1866, and was therefore entitled to the one-third increase provided for in said act of March 2, 1867, such increase was included, thus treating it as a part of 'pay proper.' (Dec. Second Comptroller, Vol. 45, p. 129.) These cases are the only ones I have been able to find where the words 'pay proper' have been construed as including or excluding increased pay."

Thus it appears that in the only actual instance that has occurred in the past to raise this question an analogous increase of pay was treated as part of the pay proper and the amount thereof included as part of a grant of "pay proper."

Longevity increase is nowhere treated by military authorities as an emolument or allowance, but always as a part of the pay. (Scott's Military Dictionary, words "Pay" and "Allowances"; 10 Opinions of Attorneys-General, 284; Digest of Opinions of Judge Advocates-General of the Army, Revised Edition, 1901, Paragraphs 1894, 1969.) Not being an allowance, it is a part of the pay itself, or of the "pay proper."

Summary.

This examination shows:

(1) That the adjective "proper" following its noun is intensive and not discriminative;

(2) That the Departments have always held "pay" and "allowances" to be different forms of compensation;

(3) That the term "pay proper" in a past act was construed to include a temporary increase of pay;

(4) That this court has held that the longevity increase is not an allowance but a part of the "current yearly pay."

The inference can not be resisted that an increase of "pay proper" is an increase of the entire pay, excluding only any increase of the allowances.

Congressional Disapproval of Definition.

A decision of the Comptroller is cited in the brief for the United States to show that the expression "pay proper" includes only the minimum or grade pay and excludes all longevity increases. The principal argument made in that decision is that Congress in the Army Appropriation Act of March 15, 1898, appropriated separately "for pay proper of enlisted men" and for "additional pay for length of service" (30 Stat. L. 318), thus contrasting, it is said, "pay proper" and longevity pay.

This decision related entirely to enlisted men, the acts now under construction not having been passed when it was rendered, June 2, 1898 (4 Comptroller's Decisions, 668). At the very next session of Congress the form of appropriation was changed. In the appropriation act of March 3, 1899, it assumes this form (30 Stat. L. 1065):

"Pay of enlisted men of all grades, including recruits, thirteen million five hundred thousand dollars.

"For additional pay for length of service, seven hundred and twenty-five thousand dollars."

The same form of appropriation continues in the army appropriation acts of May 26, 1900 (31 Stat. L. 206); March 2, 1901 (31 Stat. L. 896); June 30, 1902 (32 Stat. L. 508; March 2, 1903 (32 Stat. L. 929), and April 23, 1904

(33 Stat. L. 260). Thus Congress seems to have recognized the impropriety of appearing to contrast "pay proper" and "additional pay for length of service." That form of expression was abandoned as soon as attention was called to it and a year before the act of 1900, the first of those to be construed here, was passed.

No such contrast was ever made in the appropriations for pay of officers. The form for such appropriation was as follows, even as far back as the act considered by the Comptroller, that of 1898 (30 Stat. L. 318):

"For pay of officers of the line, two million eight hundred and sixty-five thousand dollars.

"For pay of officers for length of service, to be paid with their current monthly pay, seven hundred and ninety thousand dollars."

See the same form in the acts of March 16, 1896 (29 Stat. L. 60), and March 2, 1897 (29 Stat. L. 609).

This form has ever since continued, as shown by the appropriation acts referred to.

Thus Congress has never used any form of legislation which can be argued to contrast "pay proper" and "longevity pay" of officers. It abandoned the form said to involve such a contrast in relation to enlisted men, as soon as an executive decision was based upon it. This was a year before the first act material to this case, that of 1900, was passed.

Conclusion.

The Court of Claims properly held that the ten per cent increase on the "pay proper" of the claimant as an officer of the army should be calculated upon his entire pay, including the longevity increases. Its judgment should be affirmed.

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William B. King,
Attorneys for Appellee.

Supreme Court of the United States.

No. 509.—October Term, 1904.

The United States, Appellant, vs. Stephen C. Mills. } Appeal from the Court of Claims.

[March 13, 1905.]

This is an appeal from a judgment of the Court of Claims in favor of the appellee. The question relates to the amount of compensation payable to him under the acts of May 26, 1900, and March 2, 1901, making appropriations for the army. The particular provisions of these acts are set forth in the margin.*

The court gave judgment in favor of appellee upon the authority of its opinion in *Irwin* v. *United States*, (38 C. C. 87.)

The facts found by the court are as follows:

"The claimant, Stephen C. Mills, entered the military service of the United States as a cadet at the Military Academy, July 1, 1873, was commissioned second lieutenant June 15, 1877, and by successive promotions became major and inspector-general July 25, 1888, and lieutenant-colonel and inspector-general February 2, 1901, and still holds the last-named rank and office.

"The claimant was, by proper military orders, on duty with the Army of the United States in the Philippine Islands from a date prior to May 26, 1900, continuously until April 15, 1902, when, in accordance with orders, he arrived at San Francisco, California, on his return from said Philippine Islands. During all of that period he was serving in the Philippine Islands and beyond the limits of the States comprising the Union and the Territories of the United States contiguous thereto.

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*Act of May 26, 1900, (31 Stat. 211.)

"That hereafter the pay proper of all officers and enlisted men serving in Porto Rico, Cuba, the Philippine Islands, Hawaii and in the Territory of Alaska shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law in time of peace."

Act of March 2, 1901, (31 Stat. 903; 1st Comp. Stat. page 896.)

"That hereafter the pay proper of all officers and enlisted men serving beyond the limits of the States comprising the Union, and the Territories of the United States contiguous thereto, shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto."

"During the entire period from May 26, 1900, to April 15, 1902, named in the next preceding finding, the claimant while holding the rank of major was paid at the rate of $2,500, a year, the minimum pay of the grade of major established by section 1261 of the Revised Statutes; $1,000 longevity increase established by section 1262 of the Revised Statutes, and $250 a year as the increase of ten per cent. upon his pay proper provided by the act of May 26, 1900, (31 Stat. L. 211,) but calculated only upon the minimum or grade pay fixed by said section 1261.

"While holding the rank of lieutenant-colonel during said period the claimant was paid at the rate of $3,000 a year, the minimum pay of that grade as provided by section 1261 of the Revised Statutes, $1,000 longevity increase provided by section 1262, and $300 a year as ten per cent. increase on his pay proper as provided by the acts of May 26, 1900, and March 2, 1901, (31 Stat. 211, 903,) but computed only on the minimum pay of the grade.

"If said ten per cent. increase should be calculated upon the total pay of $3,500 received by the claimant while in the rank of major, his increase would be at the rate of $350 a year instead of $250, and if so calculated while he was in the rank of lieutenant-colonel the increase would be at the rate of $400 a year instead of $300, making a difference of $100 a year for the period covered by the claim, and aggregating for the entire period $188.87."

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The question is, upon what principal sum the ten per cent increase of compensation, to which the Government concedes the appellee is entitled, is to be computed. The appellee as major was entitled, by section 1261 of the Revised Statutes, (1st Comp. Stat. 893,) to the pay of $2,500 a year. Subsequently as lieutenant-colonel he was entitled, by the same section, to the pay of $3,000 per year. By the following section, (1262; 1st Comp. Stat. 896,) it is provided that there shall be paid to the officers below the rank of brigadier-general "ten per centum of their current yearly pay for each term of five years of service," and by section 1263 the total amount of such increase for length of service cannot exceed, in any case, "forty per centum on the yearly pay of the grade as provided by law." Under section 1262 the appellee had become entitled to pay to the amount of $1,000 a year in addition to the pay provided for in section 1261; thus, as major, he was entitled to $2,500 per year, and under section 1262, $1,000 more, or $3,500 under these two sections; as lieutenant-colonel he was paid $3,000 per year under section 1261 and $1,000 more under section 1262, or $4,000 under these two sections. He contended that the additional ten per cent. under the acts of 1900 and 1901 should be computed on the respective sums of $3,500 and $4,000, the total compensation granted by the two sections, while the Government insists that the percentage must be computed upon the sums of $2,500 and $3,000

respectively, the minimum pay granted to the grades of major and lieutenant-colonel.

The Court of Claims directed the computation to be made on the total of the sums given by the two sections, and in our opinion that court was right in so doing. The term "pay proper" used in the acts of May 26, 1900, and March 2, 1901, includes, in our opinion, the longevity pay under section 1262 as well as the sum named as pay under section 1261, the latter being the minimum sum for the grade. Every five years of service, under section 1262, up to a certain percentage of the yearly pay of the grade, as provided by law, (section 1263,) entitles the officer to be paid ten per centum of his yearly pay. The term "current yearly pay," (Sec. 1262,) was the subject of examination as to its meaning in *United States* v. *Tyler*, (105 U. S. 244.) That case related to the claim of a retired officer, and the question was, whether he was entitled to the benefit of the section (1262) after his retirement; and also, if he were so entitled, how was the computation to be made. The court held that he was entitled to the benefit of the section, and that the percentage was to be computed on the total amount of the pay of the officer, increased as it might be by the periods of five years of service. Thus the increased pay derived from additional periods of five years' service was added to the minimum pay of the grade, and ten per centum of that total was held to be the proper compensation.

The Government, however, contends that the term "current yearly pay," mentioned in section 1262, has a different meaning from the term "pay proper," contained in the acts under discussion, and it insists that the latter term is not as comprehensive as the former. We do not think that there is any such material difference between the two expressions as in this case to demand their different construction. "Current yearly pay" and "pay proper," as used in the sections, mean the regular, ordinary pay which an officer may be entitled to under the facts in his case, and if, by virtue of length of service, he is entitled to receive the compensation provided for in section 1262, that compensation is his "pay," or his "pay proper," as distinguished from possible other compensation by any allowances, or commutation, or otherwise. The method of computation adopted herein by the Court of Claims is the same as that adopted in *United States* v. *Tyler*, (*supra*;) that method has therefore received the approval of this court, or at least it has been held that the ten per centum of the current yearly pay is to be calculated upon the aggregate pay provided for in the two sections, (1261 and 1262,) and not merely upon the minimum pay granted by section 1261.

In regard to retired officers, Congress subsequently provided otherwise. (22 Stat. 118.)

The words, "pay proper," we see no reason to think are to be construed differently from the word "pay." The term means compensation, which

may properly be described or designated as "pay," as distinguished from allowances, commutations for rations or other methods of compensation, not specifically described as pay.

The Government refers to the act of Congress approved March 15, 1898, (Army Appropriation Act, 30 Stat. 318,) as giving some ground for the contention it makes in this case, because, as is stated, Congress itself therein distinguishes between "pay proper," and "additional pay for length of service," and it is urged that pay proper does not include longevity pay in the opinion of Congress as expressed in the act. The provision of the act is as follows:

"For pay proper of enlisted men of all grades, four million two hundred and ninety thousand dollars.

"Additional pay for length of service, including hospital corps, six hundred and seventy-one thousand one hundred and seventy-two dollars."

The act cited by the Government, it will be seen, refers to enlisted men and not to officers at all. In that same act of 1898 a provision for the payment of officers is in the following language (30 Stat. 318):

"For pay of officers of the line, two million eight hundred sixty-five thousand dollars.

"For pay of officers for length of service, to be paid with their current monthly pay, seven hundred ninety thousand dollars."

And in the appropriation act of March 3, 1899, the appropriation for enlisted men was changed so that it reads as follows (30 Stat. 1065):

"Pay of enlisted men of all grades, including recruits, thirteen million five hundred thousand dollars.

"For additional pay for length of service, seven hundred and twenty-five thousand dollars."

Under the language of the act of March 15, 1898, the Comptroller of the United States had held that the language used in that act showed that the compensation of enlisted men, upon which the per centum provided for was to be computed, was the minimum pay, not enlarged by any longevity pay to which the person was entitled. At the very next session of Congress the form of the appropriation was changed, as we have seen. That change has been continued since. See acts of May 26, 1900, (31 Stat. 206;) March 2, 1901, (31 Stat. 896;) June 30, 1902, (32 Stat. 508;) March 2, 1903, (32 Stat. 929,) and April 23, 1904, (33 Stat. 260.)

The ground for arguing that the term "pay proper" does not include the "additional pay for length of service" was thus taken away by a change in the form of the appropriation in all the acts subsequent to that of 1898. As we have already stated, however, that particular form in regard to enlisted men in the act of 1898 was never adopted, providing for the pay of officers. Their regular compensation and their compensation by reason of longevity services are both spoken of in that act as "pay."

We have no doubt that the pay of the officer under the statutes of 1900 and 1901, in connection with the Revised Statutes referred to, consists of the amount granted for longevity service as well as of the amount provided in section 1261, and that the total is "pay proper," upon which total the percentage is to be computed provided for in the acts of 1900 and 1901. Our attention has not been called to any decision of this court looking to the contrary principle.

The judgment of the Court of Claims is right and must be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.